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RECEIVED JUN 05 2008 CHAMBERS OF DENISE COTE
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VIA MESSENGER

Honorable Denise L. Cote  
United States District Judge  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Suite 1040  
New York, NY 10007

**MEMO ENDORSED**

Re: *Wilner, et al. v. National Security Agency, et al.*, 07-cv-3883-DLC

Dear Judge Cote:

We represent Plaintiffs in the above-referenced action. We submit the following status pursuant to the Court's May 14, 2008 order, wherein Plaintiffs were ordered to submit a status letter to the Court by June 6, 2008. (Docket No. 43.) Counsel for the government has reviewed this letter and agrees with its contents.

As the Court is aware, this case has been bifurcated into two tracks – the “*Glomar* track” and the “non-*Glomar* track” – and the following status report follows that breakdown.

Status of the *Glomar* Track

With respect to the government's contention that it can neither confirm nor deny whether there are documents responsive to certain of Plaintiffs' FOIA requests, briefing will shortly be completed on the government's motion for summary judgment. The government filed its motion for summary judgment on the *Glomar* track on March 18, 2008, Plaintiffs filed their opposition to that motion on May 6, 2008, and the government is scheduled to file its reply in support of its motion on June 3, 2008.

Status of the Non-*Glomar* Track

The government filed its motion for summary judgment on the non-*Glomar* track documents on May 5, 2008. Both prior and subsequent to this filing, the parties, through counsel, have engaged in numerous discussions about potential ways to narrow the scope of the issues between them. As a result of these discussions, the parties have reached an agreement, subject to this Court's approval, to hold the government's motion for summary judgment on the non-*Glomar* track in abeyance pending resolution of certain related FOIA cases.



Hon. Denise L. Cote

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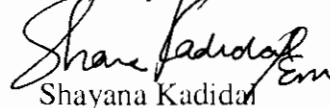
In the Memorandum in Support of Defendants' Motion for Summary Judgment Regarding the Non-Glomar Response, the government stated that "many of the records at issue in the instant litigation have been subject to other FOIA litigation both in this Court, before Judge Berman, and in the United States District Court for the District of Columbia." (Gov't Mem. at 1, citing *People for the American Way v. NSA*, 462 F. Supp. 21 (D.D.C. 2006); *The New York Times v. Dept. of Defense & Dept. of Justice*, 499 F. Supp. 2d 501 (S.D.N.Y. 2007); *Electronic Privacy Information Center v. Dep't of Justice*, 511 F. Supp. 2d 56 (D.D.C. 2007); *Judicial Watch v. Dep't of Justice*, 06-cv-00406, slip. Op. (D.D.C. March 20, 2008).) In two of the cases before the United States District Court for the District of Columbia, the court is reviewing a renewed summary judgment motion.

In an effort to avoid re-litigating the propriety of the government's withholding of documents that are also at issue in these related cases, Plaintiffs have agreed not to pursue the release of any document that any Court of Appeals, whether in this Circuit or in the D.C. Circuit, holds was properly withheld by the government. Plaintiffs believe this approach will narrow the scope of the remaining issues pending between the parties in this case – perhaps substantially so – and thus asked the government to agree to hold its non-Glomar motion in abeyance pending final resolution, including any appeals, of these related FOIA cases. The government has agreed to hold the briefing on the non-Glomar portion of the case in abeyance provided that Plaintiffs will not assert that they are prevailing parties for purposes of fees. Plaintiffs agree to this condition.

Accordingly, based on the parties' agreement, Plaintiffs request that the Court place the government's non-Glomar summary judgment motion on the Court's suspense calendar, and hold in abeyance briefing on that motion pending final resolution of the related FOIA cases, including any appeals.

As a final note, Plaintiffs wish to clarify that the parties' agreement to hold briefing on the non-Glomar track summary judgment motion in abeyance should not affect resolution of the government's summary judgment motion on the Glomar track. Given the bifurcation of the two issues, the parties believe the Glomar and non-Glomar tracks can and should proceed independently.

Sincerely,

  
Shayana Kadidal

June 9, 2008

cc: Alexander Haas

The non-Glomar May 5 motion is denied without prejudice to its renewal in the event that the parties agree that issues encompassed by the motion remain unresolved in related litigation. Ex parte letter is due December 15, 2008.  
Hannah Loh